

JOHN H. McGANN

IBLA 78-87

Decided May 8, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, dismissing appellant's protest regarding award of oil and gas lease W-61208.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents  
A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

APPEARANCES: John H. McGann, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John H. McGann appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated October 31, 1977, dismissing his protest regarding the award of oil and gas lease W-61208 in connection with a simultaneous drawing held by BLM on September 26, 1977. McGann, whose own drawing entry card (DEC) was drawn with third priority, protested the award of a lease to either the first or second priority drawees on the ground that both the first and second drawn cards were filed for the drawees by agents who should have been registered with the Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, 48 Stat. 74, 15 U.S.C. § 77(A). Appellant claims that both the winning drawing entry cards were "filed by a nonregistered broker," and contends that, "as of this date there is not one filing service agent or corporation who files D.E.C.'s and collects a fee for the same, is registered with the S.E.C." [sic.]

In support of the above contentions, appellant cites the case of SEC v. Max Wilson, Inc., et al. (U.S.D.C., New Mexico, Civil Action 77-133-M) (June 15, 1977), wherein the defendants, operators of a "filing service" specializing in the preparation of simultaneously filed oil and gas lease offers for BLM drawings, consented to the entry of a permanent injunction without admitting or denying the allegations set forth in the SEC's complaint. This injunction contained, among other provisions, a clause enjoining defendants from violating the registration provisions of the Federal securities laws in connection with BLM's simultaneous oil and gas lease filing system.

[1] Responsibility for enforcing the Securities Act of 1933, supra, is vested with the Securities and Exchange Commission which has sought only to move against the aforementioned Max Wilson, Inc., and not against any of its customer/clients who sought to participate in the Federal noncompetitive oil and gas leasing program. We note, in this connection, that the above-described action of the SEC was motivated by the desire of that agency to insure that the customers of the concerned filing service were accorded the full protection guaranteed to them by the securities laws. It would thus be incongruous to punish this protected class of investors for the misdeeds of those who allegedly sought to take illegal advantage of the investing public.

Noncompetitive Federal oil and gas leases, when issued, establish contractual relations between the United States and the individual or corporate lessee whose identity is set forth in the offer to lease. No interest in such a lease passes to a "filing service" of the sort described by appellant and, indeed, if it is established that the filing service will participate or share in the interest represented by the lease, this fact may preclude issuance of the lease. 1/

Appellant's reliance on Max Wilson, supra, is misplaced and the consent order entered in that case has no bearing or effect upon the instant proceeding. See, Elias C. Bacil, 34 IBLA 322 (1978); and

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1/ Although the DEC of Paul A. Wolf was drawn number one for parcel WY46, we note, without adjudicating the matter, that this DEC was filed by the Resource Service Company (RSC) of Milwaukee, Wisconsin, under a contractual agreement with Wolf. This Board, in a recent decision, Lola I. Doe, 31 IBLA 394 (1977), affirmed the rejection of a DEC filed by RSC in similar circumstances for the reason that the contract between RSC and the appellant in that case made RSC an interested party in the offer under 43 CFR 3102.7 and this mutuality of interest was not disclosed by the offeror.

Virginia L. Jones, 34 IBLA 188 (1978), two cases arising under circumstances closely paralleling those now before us, in which we found the Wilson case to be irrelevant to the question of simultaneous oil and gas lease drawing results.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Martin Ritvo  
Administrative Judge

